

# Question & Answers

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# Question & Answers

## Definitions:

Q What is meant by Acquisition?

A The activities to obtain an INTEREST in, and **POSSESSION of**, real property. 23 CFR 710.105

Q What is a Donation?

A The VOLUNTARY transfer of privately owned real property, by a property owner who has been (1) informed in **WRITING** by the acquiring agency of RIGHTS and BENEFITS available to owners under the Uniform Act, for the benefit of a public transportation project (2) without compensation or with compensation at less than fair market value. 23 CFR 710.105

Q What is Easement?

A An interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either **TEMPORARILY** or **PERMANENTLY**. 23 CFR 710.105

Q What is considered a Federal-aid Project?

A A project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in chapter 1 of title 23, United States Code. 23 CFR.710.105

Q What is a Federal assisted project?

A A project or program that receives grant funds under title 23, United States Code. 23 CFR 710.105

Q What is meant by Real Property or Real Property Interest?

A Any interest in land and any improvements thereto, including fee and less-than- fee interest. 23 CFR 710.105

Q What is considered Right-of-way?

A Real property and or the rights therein obtained for the construction, operation, maintenance or mitigation of a transportation or related facility. 23 CFR 710.105

Q What is considered an administrative settlement and who must approve?

A Is a settlement reached prior to filling a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by authorized agency official. All settlements must be approved by the agency with oversight responsibility. 23 CFR 710.105

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Q What is meant by Subgrantee?

A A government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activities funded by title 23 grant funds. 23 CFR 710.105

ROW Manual, Procedures and Staff

Q Must the Subgrantee employ a person(s) dedicated to perform /acquire real property interest?

A Each grantee and Subgrantee or agency working on behalf of grantee or Subgrantee shall be adequately staffed, equipped and organized to discharge its real property related responsibilities. 23 CFR 710.201(b)

Q Can we use our own Local Public Agency ROW manual and procedures to acquire real property interest?

A Every Subgrantee must ensure that its title 23-funded project are carried out using an FHWA-approved and up-to-date ROW manual. 23 CFR 710.201(d)

Q If we don't have an FHWA-approved ROW manual, how do we comply, ensuring that our title 23-funded project are carried out using an FHWA approved manual?

A 1) The Subgrantee may certify in writing that they will adopt and use the FHWA-approved ADOT ROW Manual; or 2) the Subgrantee may submit their own ROW manual to ADOT for review and determination whether it complies with Federal and State requirements, and certifying that once ADOT has reviewed and approves the manual that it will use the approved ROW manual. 23 CFR 710.201(d)

Q What if federal law changes but the approved ROW manual has not been updated, do we follow the approved ROW manual or the federal law?

A All Grantees, subgrantees and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual. 23 CFR 710.201(c)

Q Can we use another agencies approved ROW manual instead of the FHWA-approved ROW manual?

Q Subgrantees may submit their **OWN** ROW manual for a review and determination of compliance or use the FHWA-approved ADOT ROW manual. There is no provision that another agencies ROW manual may be used. 23 CFR 710.201 d(2)

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Pre-offer ROW activities:

Q What activities are considered preliminary acquisition activities?

A Title search, appraisal, appraisal review, wavier valuation preparation, preliminary property map preparation, and preliminary relocation planning. 23 CFR 710.303(3)

Q Must we wait until we have National Environmental Policy Act (NEPA) before having contact with property owners?

A Work involving contact with property owners for the purpose of negotiation and relocation assistance must normally be deferred until after NEPA approval. 23 CFR 710.203(3)

Q Must the Subgrantee have FHWA authorization before proceeding with real property acquisitions?

A As a condition of Federal funding under title 23, acquiring agency SHALL obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early acquisition and protective buying. 23 CFR 710.303

Q In a title 23 federal funded project what type of real property interest must be acquired?

A The real property interest to be acquired must be adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public. 23 CFR 710.305(b)

Q Who establishes the amount of what is believed to be just compensation?

A The amount believed to be just compensation shall be determined and approved by a responsible official of the Subgrantee. 23 CFR 710.305(c)

Q Must the Subgrantee provide a description of the acquisition process to the property owner?

A Yes, the agency shall provide any affected property owner under title 23 with a written description of its real property acquisition process and of the owner's rights, privileges and obligations. 23 CFR 710.305 (d)

Donations

Q Can donation of property be accepted?

A Yes. A non-governmental owner, whose real property is required for a title 23 project may donate the property. 23 CFR 710.505(a)

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Q When can a donation of Real Property be made?

A The donation may be made at any time during the development of a project subject to applicable State laws. 23 CFR 710.505(a)

Q If property is donated, is the subgrantee required to advise the property owner that he/she is entitled to compensation?

A Yes. Prior to accepting the property, the owner must be informed in **WRITING** by the acquiring agency of his/her right to receive just compensation, the right to an appraisal or waiver valuation of the real property and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable State Law. 23 CFR 710.505(a)

## Notices and Records

Q Can notices to a property owner be sent via mail?

A Each notice that is required to be provided to a property owner or occupant shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the file. 49 CFR 24.5

Q How long do we have to keep records and what do we keep?

A You are required to keep adequate records of your acquisition and displacement activities in sufficient detail to demonstrate compliance with the Uniform Act. The records must be kept for a minimum of 3 years from the final payment or in accordance with applicable regulations of the federal funding agency, whichever is later. 23 CFR 710.201(e)(1) and 49 CFR 24.9(a)

Records of County, City or Town or other political subdivision of the state must be retained in accordance with Arizona Revised Statute Title 39 and the Arizona State Library, Archives and Public Records retention standards and schedule. ADOT Manuals certified by the FHWA District Office requires right of way records be maintained for at least five (5) years after the FHWA final voucher payment has been recorded. Under certain circumstances, FHWA may require a longer period.

## Appraisal, Offers and Incidental

Q Can we appraise the subject property without contacting the owner?

A No. A property owner or their representative must be given the opportunity to accompany the appraiser during the appraisal inspection. 49 CFR 24.102 (c)(1)

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Q Is an appraisal always required?

A No, when it is estimated that the value of a proposed action is estimated at \$10,000 or less. The Subgrantee may prepare a valuation waiver with the approval of grantee, the individual preparing the waiver must be familiar with the local real estate market and be qualified to provide the valuation. 49 CFT 24.102 (c)(2)(ii)

Q Are we obligated to offer the appraised value if we disagree with it?

A Before the initiation of negotiations, the agency shall establish what it believes is just compensation. The amount of just compensation shall not be less than the approved appraisal. 49 CFR 24.102(d)

Q Must a Summary Statement accompany the offer?

A Yes, along with the initial written offer the owner shall be given a written statement of the basis for the offer. The Summary Statement shall contain the offer amount, a description of the real property to be acquired, a description of the interest to be acquired and a description of the improvements and trade fixtures to be acquired. 49 CFR 24.102 (e)

Q How long must a property owner be given to consider the offer presented?

A At a minimum the property owner shall be given 30-days to consider the offer. 49 CFR 24 appendix A, 24.102(f)

Q If there is a small portion of the owner's property remaining, is the agency required to purchase it?

A If it is determined that there is an uneconomic remnant remaining, the agency **SHALL** offer to acquire the uneconomic remnant along with the portion of the property needed for the project. The property owner may refuse to sell uneconomic remnant. 49 CFR 24.102(k)

Q What is the appraisal criteria that must be followed?

A The criteria may be found in 49 CFR 24.103 & 49 CFR 24.104 for appraisal review.

Q Are incidental expenses incurred in the transfer of title to the agency reimbursable to the property owner?

A The owner of the real property shall be reimbursed for ALL reasonable expenses incurred in the process of transferring ownership; and whenever feasible the agency shall pay such fee(s) directly to billing agent. 49 CFT 24.106

Didn't find an answer to your questions, please send your questions via email to [ROWLPA@azdot.gov](mailto:ROWLPA@azdot.gov).

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